**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 2753 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**CHAMAR SHAILESHBHAI BHIKHABHAI - Petitioner(s)**
**Versus**
**CHAMAR KALUBHAI RAMANBHAI & 2 - Respondent(s)**

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**Appearance :**

MR JV JAPEE for Petitioner(s) : 1,
MR BS BRAHMBHATT for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2 - 3.
GOVERNMENT PLEADER for Respondent(s) : 3,

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**CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

**Date : 20/06/2006**

**ORAL JUDGMENT**

1.Rule. Mr.B.S. Brahmbhatt, learned advocate waives service of Rule for the respondent No.1 and Ms.Paurami Sheth, learned A.G.P. waives service of Rule for the respondent No.3.

2.The facts of the case are that for allotment of a fair

price shop at Village Damordhundha, applications were invited, wherein, the petitioner and respondent No.1 both had applied. The Collector, Sabarkantha by order dated 23.08.2005 allotted the fair price shop in favour of the petitioner. A copy of which is at Annexure 'A' to this petition. Respondent No.1, being aggrieved, preferred an appeal being APL:10-2005/116 K before the State of Gujarat, who decided the same by order dated 10.01.2006.

3. The learned advocate for the petitioner submitted that the Appellate Authority after recording the contentions raised by the petitioner, without dealing with any of them passed the order under challenge. The learned advocate read the entire order and successfully demonstrated that the order is a glaring example of non application of mind. As the Appellate Authority after recording the contentions raised by the petitioner, without dealing with any of them decided the matter on altogether a different ground namely the 'percentage secured by the petitioner and the respondent No.1 in the Higher Secondary Examination'.

4. Not only the learned advocate for the petitioner, but

even Mr.Brahmbhatt, the learned advocate for respondent No.1, also submitted that the Appellate Authority did not take trouble to record a fact that the person who had issued the 'experience certificate' in favour of respondent No.1 had remained present before the Appellate Authority and had sworn an affidavit dated 03.09.2005, a copy of which, he is ready to produce before this Court. He submitted that this shows that what is recorded by the Appellate Authority is not correct. He next submitted that besides what is recorded by the Collector in his order dated 23.08.2005 is also not correct as it is not borne out from the record.

Thus, not only the learned advocate for the petitioner but even the learned advocate for the respondent No.1 also submitted that the Appellate Authority has not dealt with the contentions raised by the parties. The gist of the submissions of both the learned advocates is that the Appellate Authority has not applied its mind. It has not taken care to either record the presence of the person who had issued the 'Experience Certificate' nor has dealt with the affidavit filed by him.

5.The learned A.G.P. is not able to support the order of the Appellate Authority in view of the aforesaid glaring shortcomings, noticed in the order.

6.Having heard the learned advocates, having perused the record, the Court is of the opinion that the order of the Appellate Authority cannot be allowed to stand as it causes miscarriage of justice.

In the result, the petition is allowed. The order passed by the Appellate Authority on 10.01.2006 is quashed and set aside. The Appellate Authority is directed to hear Appeal No.10 of 2005 afresh, after giving full opportunity of hearing to all the parties and also an opportunity to produce all necessary material. In case of necessity, the Authority shall also allow the parties to examine the necessary witnesses or in the alternative allow them to produce the affidavit of such witnesses. The Appellate Authority shall then decide the matter by a reasoned order, as expeditiously as possible but not later then 30.09.2006.

7.In view of the aforesaid order, 'the status quo'

granted by this Court on 22.02.2006, which has operated for all this time is ordered to continue for a period of 15 days after the communication of the order passed by the Appellate Authority to the petitioner in case the order is adverse to him.

8.Rule is made absolute with no order as to costs.

(RAVI R.TRIPATHI, J.)

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